

DEPARTMENT OF JUSTICE PROCESS FOR IDENTIFYING, PREVENTING, AND RECOVERING IMPROPER AND ERRONEOUS PAYMENTS

EXECUTIVE SUMMARY

A key component to the President's Management Agenda, which was initiated in August 2001, is the reduction of improper and erroneous payments.¹ Improper and erroneous payments are payments that should not have been made or were made for incorrect amounts because of errors, poor business practices, or intentional fraud or abuse. According to the Office of Management and Budget (OMB), payment mistakes typically occur when agencies distribute benefits to ineligible applicants, overpay or underpay beneficiaries, or make duplicate payments. Improper and erroneous payments are a significant problem in the federal government, and a recent report estimates that these payments exceed \$45 billion annually.²

In recent years, legislation has been enacted to address this problem, followed by implementation guidance from OMB. This legislation requires governmental agencies to conduct program inventories and assess the improper payment risk in each identified program. In addition, agencies must annually report on progress made in identifying and recovering improper payments.

This audit assessed the Department of Justice's (Department) compliance with this legislation and evaluated its efforts to identify, prevent, and recover improper and erroneous payments.

Background

Two laws address the identification, prevention, and recovery of improper payments. The first law, Public Law No. 107-300, the *Improper Payments Information Act of 2002* (IPIA), was enacted in November 2002.

¹ The definitions for the terms "improper payment" and "erroneous payment" are essentially the same, and we use these terms interchangeably throughout this report.

² See OMB report entitled, *Improving the Accuracy and Integrity of Federal Payments*, dated January 2005.

The IPIA requires the heads of federal agencies to annually: 1) identify programs and activities susceptible to improper payments, 2) estimate the amount of improper payments, and 3) report that estimate to Congress. In addition, for improper payments estimated to exceed \$10 million, the agency must report the actions it is taking to reduce its improper payments, including a discussion of the causes.

In May 2003, OMB issued memorandum M-03-13 as guidance for agencies to comply with the IPIA. This memorandum requires all federal agencies to annually review and identify programs susceptible to significant improper payments, which OMB defined as programs with annual improper payments exceeding both 2.5 percent of program payments and \$10 million. Information on programs susceptible to significant improper payments must be reported in each agency's annual Performance and Accountability Report (PAR). The PAR is an annual report that provides information on an agency's actual performance and progress in achieving the goals in its strategic plan and performance budget.

The second piece of legislation is Public Law No. 107-107, the *National Defense Authorization Act for FY 2002* (NDAA), Subchapter VI - Recovery Audits, enacted in December 2001. This law requires all agencies that enter into contracts totaling more than \$500 million in a fiscal year to carry out a cost effective program to identify errors in payments and recover amounts erroneously paid. These actions are also known as "recovery audits."

In January 2003, OMB issued memorandum M-03-07 as guidance for agencies implementing recovery audit activities. This memorandum essentially mirrors the NDAA, requiring agencies with total contracts in excess of \$500 million in a fiscal year to carry out a cost-effective program for identifying and recovering improper payments. This memorandum also provides guidance on the disposition of recovered amounts and directs affected agencies to submit annual reports detailing recovery audit activities. This guidance states that "agency Inspectors General and other external agency auditors are encouraged to assess the effectiveness of agencies' recovery audit programs."

In July 2004, OMB issued further IPIA and recovery audit reporting guidance in memorandum M-04-20. In addition to requiring information relating to agency IPIA activities, this guidance requires recovery audit activities to be included in the PAR for FY 2004 and annually thereafter.

The Justice Management Division (JMD) is responsible for ensuring the Department's compliance with the laws, regulations, and guidance relating to improper payments. JMD provides assistance to senior Department officials relating to basic Department policy; provides direct administrative support services; and develops and reviews the implementation of Departmentwide policies, standards, and procedures. JMD provided IPIA and recovery audit reporting instructions to Department components in a memorandum dated August 2004.

During August and September 2004, Department components responded to JMD's instructions by providing IPIA reports containing information on improper and erroneous payments and the status of recovery audit efforts. JMD compiled and combined all component responses, prepared one consolidated response, and reported the results in the Department's PAR for FY 2004.

As detailed in the following section, the components we reviewed were in various stages of implementing a recovery audit effort.

Current Recovery Audit Efforts

The BOP initiated a recovery audit program in September 2003, using a private contractor, to identify its potential improper payments.³ Initially, the contractor is reviewing BOP payments made from 1999 through 2004. The contractor had not completed its review at the time our fieldwork ended in November 2004. As of September 2004, a total of \$216,656 in improper payments had been identified and confirmed. The BOP had recovered \$211,251 of this amount, or nearly 98 percent.

In October 2004, OJP signed an agreement with a private contractor to initiate a recovery audit effort. In addition to the audits and reviews conducted by its External Oversight Division, OJP officials plan to utilize this recovery audit program to identify its improper payments. The contractor will initially review payments from FY 2003 and FY 2004, but may expand into earlier years, depending on the results of the initial review. Because OJP is in the initial phases of this program, no improper payments had been

³ The Department piloted a recovery audit program in FY 2003 and FY 2004, using a private contractor. This pilot included the Department's Offices, Boards, and Divisions (OBDs) and the BOP.

identified at the time of our fieldwork. However, OJP estimates that approximately \$1.3 million in improper payments will be identified and recovered utilizing this program.

The FBI does not yet have a formalized recovery audit program in place. It does have an informal system to identify improper payments from many sources, including voucher examiners, refund checks received, and inquiries from vendors. In addition, it utilizes the results of internal reviews at each field office and reviews conducted by its Inspections Division to track improper payments. In FY 2004, the FBI identified \$292,137 in improper payments made in 2004, and had recovered \$237,160, or 81 percent of those payments, at the time of our fieldwork.

We determined that the USMS does not have a mechanism in place to identify improper payments, and did not have a recovery audit program in place to quantify and collect improper payments. USMS officials asserted that the USMS had a low risk of making improper payments because of sufficient internal controls. As a result of the absence of a USMS recovery audit program, no improper payments had been identified or recovered at the time of our fieldwork.

Audit Approach

This audit was requested by JMD. The objectives of our audit were to determine whether the Department has: 1) established policies and procedures for identifying and preventing improper and erroneous payments, 2) determined the extent of improper and erroneous payments, and 3) established methods to recover improper and erroneous payments.

To achieve these objectives, we reviewed documentation and interviewed officials at JMD and conducted interviews and reviewed policies and procedures at four Department components.⁴ The components included in this audit were selected based on several factors, including the number and amount of vendor payments made in FY 2003 and FY 2004, the completeness of associated IPIA reporting, whether a contractor was being used for recovery audit activities, and the results of each component's

⁴ Department components included in this audit were the Federal Bureau of Prisons (BOP), Office of Justice Programs (OJP), Federal Bureau of Investigation (FBI), and United States Marshals Service (USMS).

financial statement audit for FY 2004. Appendix I contains the details of our component selection factors.

At JMD, we assessed current Departmentwide efforts to comply with provisions of the IPIA and the NDAA. At each of the four components, we reviewed the reports submitted in accordance with the IPIA and assessed each component's current efforts for preventing, identifying, and quantifying erroneous and improper payments. Further, we reviewed current recovery audit efforts at each of the selected components.

The results of the various aspects of our auditing work are described in the following section.

Summary of Findings and Recommendations

Identifying and Preventing Improper and Erroneous Payments

In assessing the Department's progress toward identifying and preventing improper and erroneous payments, we reviewed laws and regulations applicable to the IPIA. We also analyzed the reports each component submitted in accordance with the IPIA, which included each component's risk assessment. We compared these reports to the IPIA reporting requirements, and assessed each component's compliance with relevant requirements. In addition, we interviewed component officials and reviewed policies and procedures used by the BOP, OJP, FBI, and USMS to identify and prevent improper payments.

We determined that the risk assessments conducted by the USMS and OJP were not adequate to completely measure the risk of improper payments in all programs the components administer. Further, we noted that the IPIA reports prepared by the BOP, OJP, and USMS did not contain a complete description of the risk assessments performed. We also found weaknesses in certain policies and procedures used to prevent improper payments at the FBI and USMS.

We noted that none of the risk assessments included an analysis or consideration of any material weaknesses, reportable conditions, or noncompliance matters resulting from the component's annual financial statement audit. Based on the results of the Department's consolidated financial statement audit for FY 2004, we believe that a thorough risk

assessment should include a review of any reportable conditions, material weaknesses, or matters of noncompliance noted by the independent auditors, and an analysis of whether those weaknesses or conditions could potentially impact the risk of making improper payments.

To address these issues, we recommended changes in each component's risk assessment processes, improvements in the reporting of those risk assessments, and enhancements to the FBI's and USMS's policies and procedures used to prevent improper payments.

Determining the Extent of Erroneous and Improper Payments, and Methods to Recover Them

To assess whether the Department had adequately determined the extent of its improper payments and had established methods to recover them, we: 1) reviewed laws and regulations applicable to recovery audits, 2) interviewed component officials responsible for recovery audit activities, and 3) reviewed policies and procedures used by the components to determine the extent of their improper payments and to recover them. In addition, we reviewed policy guidance from JMD relating to recovery audits.

We determined that the FBI, OJP, and USMS did not have processes in place to determine the full extent of improper payments. As previously noted, each component reviewed was at different stages in their efforts to implement recovery audits. These audits are used to determine the amounts of improper payments made and then recover them.

Further, none of the four components audited had established a fully-documented program to recover improper payments. While the BOP and OJP had initiated a recovery audit program, they had not implemented written policies and procedures for those programs. Further, the FBI and USMS had not yet initiated any type of formalized recovery audit program.

We also determined that Departmentwide recovery audit guidance provided by JMD could be improved because there was a lack of consistency among the components as it related to each component's progress in implementing and maintaining a recovery audit program. JMD did not have an official reporting mechanism in place that would allow it to monitor each component's recovery audit activities on a regular, ongoing basis.

To address these issues, we recommended that JMD implement Departmentwide policies for recovery audits and for quarterly reporting of recovery audit activities by each component. Further, we recommended that each component develop and implement a comprehensive recovery audit program, including written policies and procedures for each program. Finally, we recommended that each component report its recovery audit activities quarterly to JMD.

Our audit results are discussed in greater detail in the Findings and Recommendations section of this report. Our audit objectives, scope, and methodology, appear in Appendix I. The audit criteria applied during our work is described in Appendix II.

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INTRODUCTION

Federal agencies make more than \$2 trillion in payments to individuals and organizations each year. A recent report disclosed that federal agencies made a total of \$45.1 billion in improper and erroneous payments in fiscal year (FY) 2004⁵ Improper and erroneous payments are payments that should not have been made or were made for incorrect amounts because of errors, poor business practices, or intentional fraud or abuse. Improper and erroneous payments are a significant problem in the federal government.

The President's Management Agenda (PMA) was implemented in August 2001 as a strategy for improving the management and performance of the federal government. It focuses on areas where deficiencies were most apparent and where the government could begin to deliver concrete, measurable results. The PMA includes five government-wide initiatives, one of which is "Improved Financial Performance."⁶ Included in that initiative are requirements for the identification and reduction of improper or erroneous payments within the federal government.

The purpose of this audit was to determine whether the Department of Justice (Department) has: 1) established policies and procedures to identify and prevent improper and erroneous payments, 2) determined the extent of improper and erroneous payments, and 3) established methods to recover improper and erroneous payments.

During this audit, we reviewed current laws, regulations, guidance, and instructions to obtain an understanding of the requirements with which federal agencies must comply. To assess Department efforts to identify, prevent, and recover improper and erroneous payments, we conducted a review of four Department components. The four components included in this audit were the Federal Bureau of Prisons (BOP), Office of Justice Programs (OJP), Federal Bureau of Investigation (FBI), and United States Marshals Service (USMS). The components were selected based on several factors, as detailed in Appendix I of this report. We conducted interviews of component management, reviewed policies and procedures related to

⁵ See OMB report entitled, *Improving the Accuracy and Integrity of Federal Payments*, dated January 2005.

⁶ These five initiatives are further detailed in Appendix III of this report.

preventing and recovering improper payments, analyzed reports that were submitted to JMD to determine whether the components complied with applicable laws and regulations, and assessed the Department's overall compliance with relevant laws and regulations.

The terms "erroneous payment" and "improper payment" have been similarly defined by various sources. According to the Office of Management and Budget (OMB), an erroneous payment is:

Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirement. Incorrect amounts are overpayments and under payments, including inappropriate denials of payment. An erroneous payment includes any payment that was made to an ineligible recipient or for an ineligible service. Erroneous payments are also duplicate payments, payments for services not rendered, and payments that do not account for credit for applicable discounts.

The Government Accountability Office (GAO) defines improper payments as:

Payments that should not have been made or were made for incorrect amounts. Specifically, they include inadvertent errors, such as duplicate payments and calculation errors; payments for unsupported or inadequately supported claims; payments for services not rendered or rendered to ineligible beneficiaries; and payments resulting from fraud and abuse.

Because these definitions are essentially the same, we use the terms "improper payments" and "erroneous payments" interchangeably throughout this report, and consider them synonymous.

Background

Two laws address the identification, prevention, and recovery of improper payments. The first, Public Law No. 107-300, the *Improper Payments Information Act of 2002* (IPIA), enacted in November 2002, requires the heads of federal agencies to annually: 1) identify programs and activities susceptible to improper payments; 2) estimate the annual amount of improper payments and submit that estimate to Congress; and 3) for

improper payments that exceed \$10 million, the agency must report the actions it is taking to reduce improper payments, including a discussion of the causes.

The second, Public Law No. 107-107, the *National Defense Authorization Act for FY 2002* (NDAA), Subchapter VI - Recovery Audits, requires all agencies that enter into contracts with an annual total value in excess of \$500 million to carry out a cost-effective program to identify errors and recover amounts erroneously paid. These programs are also known as "recovery audits."

OMB has provided guidance for implementing these laws. Guidance on the implementation of IPIA was originally issued by OMB in Circular A-11, Section 57, in 2002. This circular required specifically identified agencies with programs considered to be at high risk for improper payments to investigate, identify, and report on improper payments. Examples of these agencies and programs included the Department of Agriculture's Food Stamps program, the Department of Health and Human Services' Medicare and Medicaid programs, and the Social Security Administration's Old Age and Survivors' Insurance program, among others. The Department of Justice and its programs were not specifically identified in this document.

In May 2003, OMB issued additional guidance in memorandum M-03-13. This guidance requires all federal agencies to annually review and identify programs susceptible to significant improper payments, defined as programs with annual improper payments exceeding both 2.5 percent of program payments and \$10 million. For programs meeting this criteria, agencies must: 1) provide a statistically valid estimate of the annual amount of erroneous payments in its programs and activities; 2) identify the precise reasons the identified programs are at risk; 3) implement a plan to reduce erroneous payments, including the establishment of targets and timelines; 4) report the estimates of the annual amount of erroneous payments and progress in reducing them; and 5) provide other information on management accountability, information systems and infrastructure, and legal barriers. This information must be reported in each agency's annual Performance and Accountability Report (PAR).⁷

⁷ The PAR is an annual report that provides information on an agency's actual performance and progress in achieving the goals in its strategic plan and performance budget.

OMB issued additional guidance relating to programs for identifying and recovering improper payments in memorandum M-03-07, dated January 2003. This guidance requires agencies with total contracts in excess of \$500 million in a fiscal year to carry out a cost-effective program for identifying and recovering improper payments. This memorandum also provides guidance on the disposition of recovered amounts and requires affected agencies to submit annual reports detailing recovery audit activities. Further, this guidance states that "agency Inspectors General and other external agency auditors are encouraged to assess the effectiveness of agencies' recovery audit programs."

OMB issued further IPIA and recovery audit reporting guidance in memorandum M-04-20, dated July 2004. In addition to requiring information relating to agency IPIA activities, this guidance directs agencies to include the following recovery audit information in the FY 2004 PAR: 1) a discussion of each agency's recovery auditing effort, 2) the amount of recoveries expected, 3) the actions taken to recover them, and 4) the business process changes and internal controls instituted and/or strengthened to prevent future occurrences.

Department of Justice Reporting Activities

JMD is responsible for ensuring the Department's compliance with the laws, regulations, and guidance relating to improper payments. JMD provided IPIA and recovery audit reporting instructions to Department components in a memorandum dated August 2004. These instructions support those set forth in the guidance provided in the above-referenced OMB policy memoranda. The instructions required each component to provide the following details:

- a description of the risk assessment performed and a list of susceptible programs;
- the statistical sampling methodology used, if applicable;
- the component's plan to reduce improper payments;
- estimates of improper payments in future years;
- a description of the component's recovery audit effort;

- the steps the component is using to ensure that management is held accountable for reducing improper payments;
- whether the information systems and infrastructure are adequate to reduce improper payments; and if not, a description of the resources requested to improve its information systems and infrastructure;
- any statutory or regulatory barriers which may limit corrective actions in reducing improper payments; and
- additional comments on overall agency efforts, specific programs, best practices, or common challenges identified.

In August and September 2004, Department components responded to JMD's instructions by providing IPIA reports containing information on improper payments and the status of recovery audit efforts. JMD then compiled and consolidated all component responses and prepared one Departmentwide response, which was included in the PAR for FY 2004.

OIG FINDINGS AND RECOMMENDATIONS

I. Policies and Procedures for Identifying and Preventing Improper and Erroneous Payments

Our audit determined that the risk assessments conducted by the USMS and OJP were not adequate to completely measure the risk of improper payments in all programs administered. In addition, we found weaknesses in certain policies and procedures used to prevent improper payments at the FBI and USMS. These conditions could cause improper payments to go undetected and therefore not be recovered.

Many of the causes of improper payments can be traced to the lack of or an inadequate system of internal control. According to information obtained from the Chief Financial Officers Council and the President's Council on Integrity and Efficiency, the causes for improper payments can be broken down into the following three broad categories:

- *A weak or incomplete program control environment:* this includes the systems, procedures, and practices, including rigorous oversight, that can help prevent or correct improper payments.
- *Risks inherent in the regulatory and policy structure:* these define and support each federal program, and may stem directly from policy choices and mandates.
- *A lack of governmentwide consistency, coordination, and standardization:* this includes a lack of alignment of program eligibility policies, sharing of data, consistency in measuring improper payments, and dissemination of best practices.

To accomplish the objectives of this audit, we interviewed component officials and reviewed policies and procedures used by the BOP, OJP, FBI, and USMS to identify and prevent improper payments. In addition, we reviewed each component's IPIA report, which included its program risk assessment, and compared each report to the IPIA reporting requirements.

As detailed in the Introduction section of this report, the IPIA requires a risk assessment of all programs to identify those that are susceptible to significant improper payments. Guidance provided by OMB in accordance with the IPIA requires each agency to conduct a full program inventory and describe the risk assessment it performed on that inventory, including a listing of all risk-susceptible programs.

In reviewing the risk assessments conducted by the four components, we noted that none of the assessments included an analysis or consideration of the material weaknesses, reportable conditions, or noncompliance matters resulting from the component's annual financial statement audit.⁸ All of the components reviewed had either material weaknesses, reportable conditions, noncompliance matters, or some combination of the three reported in the FY 2004 financial statement audits. In addition, the Department received an overall disclaimer of opinion for its consolidated FY 2004 financial statement audit based on the significance of the findings within OJP.

In our opinion, certain internal control issues could increase the risk of making improper payments. Thus, a thorough risk assessment should include a review of any reportable conditions or material weaknesses noted by the independent auditors and an analysis of whether those weaknesses or conditions could potentially impact the risk of making improper payments. The management of the components we reviewed, as well as JMD, agreed that this would be useful information to include in future risk assessments.

In addition to the consideration of the annual financial statement audit results, we noted the following conditions during our review of policies and procedures used to identify and prevent improper payments, and in the risk assessments prepared by each component.

Federal Bureau of Prisons

The Department piloted a recovery audit program in FY 2003 and FY 2004, using a private contractor. This pilot included the Department's Offices, Boards and Divisions (OBDs) and the BOP. The BOP's portion of the recovery audit program was initiated in September 2003. This effort is

⁸ The Chief Financial Officer's Act of 1990 establishes a leadership structure, provides for long-range planning, requires audited financial statements, and strengthens accountability reporting.

designed to identify and recover improper payments. Initially, the contractor is reviewing BOP's payments made from 1999 through 2004 and had not completed its review at the time our fieldwork ended in November 2004. As of September 2004, a total of \$216,656 in improper payments had been identified and confirmed. The BOP had recovered \$211,251 of this amount, or nearly 98 percent. Further information regarding the BOP's recovery audit program is detailed under Finding II of this report.

According to BOP management, it has an internal control structure in place to prevent improper payments.⁹ That structure includes written policies and procedures, the use of customized forms for recording multiple payments on one invoice, and the use of a three-tiered payment approval process. In addition, controls are built into the BOP's financial management system, which generates a report of potential duplicate payments. The BOP also has a Program Review Division, which conducts internal audits at BOP institutions on a rotating basis, at least once every three years. These audits include transaction testing. Finally, BOP policies state that certifying officers are held accountable for each voucher they approve for payment.

In August 2004, the BOP submitted a report to JMD in accordance with the IPIA, which included a description of the BOP's risk assessment. However, according to BOP management, the assessment included in the report was not representative of the assessment actually conducted. The report indicated that the BOP's risk assessment consisted only of the overall opinion from of its annual financial statement audit and the results of its recovery audit efforts, and did not contain details for the BOP's program inventory, as required.

When we interviewed BOP managers, they stated they were unsure of what specifically to report, because it was the first year these reports were required. They also indicated that the risk of improper payments was actually assessed in two primary payment program areas: vendor payments and travel reimbursements. Further, they stated that the risk assessment also included a review of internal controls and of its internal program reviews.

When we discussed this issue with BOP managers, they concurred with our finding that the risk assessment detailed in the BOP's IPIA report was

⁹ See the *Statement on Internal Controls*, at the back of this report, for details of our review of BOP's controls, policies, and procedures.

not reflective of the assessment actually conducted, and agreed to include a more complete risk assessment narrative in future IPIA reports.

Office of Justice Programs

In October 2004, OJP signed an agreement with a private contractor to initiate a recovery audit effort. In addition to the audits and reviews conducted by its External Oversight Division, OJP officials plan to utilize this recovery audit effort to identify its improper payments. Initially, the contractor will review payments from FY 2003 and FY 2004, but may expand into earlier years, depending on the results of the initial review. Because OJP is in the initial phases of this program, no improper payments had been identified at the time of our fieldwork. However, OJP estimates that approximately \$1.3 million in improper payments will be identified and recovered utilizing this program. Further information regarding OJP's recovery audit program is detailed under Finding II of this report.

According to OJP management, there is an internal control structure in place to prevent improper payments.¹⁰ That structure includes written policies and procedures for processing invoices, internal audits, the use of reports to compare obligations to source documents, and controls built into OJP's financial management system, including an invoice tracking system. In addition, OJP policies state that certifying officers are held accountable for payments they approve. OJP's External Oversight Division conducts reviews of grantees using a risk-based model, and these reviews include transaction testing.

In August 2004, OJP submitted a report to JMD in accordance with the IPIA, which included a description of OJP's risk assessment. In its report, OJP stated that it "has encountered no instances of improper grant payments." When we asked OJP management about this statement, we were told that OJP's FY 2004 internal reviews revealed no instances of payments being made to incorrect grantees, and the statement did not refer to unallowable costs or funds not used in accordance with grant conditions. In FY 2004, OJP reported making over 82,000 grant payments totaling nearly \$5.7 billion. In our judgment, the magnitude of these payments poses a significant risk of improper payments to incorrect grantees.

¹⁰ See the *Statement on Internal Controls*, at the back of this report, for details of our review of OJP's controls, policies, and procedures.

In addition, the program inventory and assessment included in OJP's IPIA report was inadequate and incomplete. This program inventory and assessment only included grant payments and not any other payments made by OJP, such as vendor payments, travel reimbursements, and payments made under various initiatives, such as the Southwest Border Prosecution Initiative, Bulletproof Vest Partnership, or the State Criminal Alien Assistance Program. The lack of a complete risk assessment of improper payments was also identified as a noncompliance issue during OJP's independent financial statement audit for FY 2004.¹¹

When we discussed this issue with OJP managers, they concurred with our finding and agreed to conduct a complete program inventory and risk assessment, and include the results in future IPIA reports.

Federal Bureau of Investigation

The FBI does not yet have a formalized recovery audit program in place, but FBI managers stated that the FBI utilizes several methods to identify improper payments. The FBI has an informal system to identify improper payments from many sources, including voucher examiners, refund checks received, and inquiries from vendors. In addition, the FBI utilizes the results of internal reviews at each field office and reviews conducted by its Inspections Division to identify potential improper payments. Improper payments are tracked and monitored on a spreadsheet. In FY 2004, the FBI identified \$292,137 in improper payments made in 2004. It had recovered \$237,160 or 81 percent of those payments at the time of our fieldwork. Our recommendation to implement a recovery audit program, which is detailed in Finding II of this report, addresses the lack of a formalized system to identify improper payments.

According to the FBI's management, it has an internal control structure in place to prevent improper payments.¹² That structure includes written policies and procedures, the use of exception reports, the monthly closing process of its financial management system, and ongoing employee training. In addition, the FBI has two internal review functions – one at the

¹¹ OJP's noncompliance with the IPIA was noted in the *Report of Independent Auditors on Compliance and Other Matters*, issued by PricewaterhouseCoopers LLP, dated October 27, 2004.

¹² See the *Statement on Internal Controls*, at the back of this report, for details of our review of FBI's controls, policies, and procedures.

field office level and the other by its Inspections Division. These reviews are conducted on a rotating basis and include transaction testing. FBI officials also stated that all employees are responsible for reducing improper payments, and this element is included in the FBI management's Performance Work Plans.

During our fieldwork we determined that the FBI had a Desk Guide that contained invoice processing procedures. However, we could not verify that this guide had been provided to the appropriate personnel. For example, when we asked to review a copy of this guide, employees responsible for processing invoices could not produce one. When we brought this to the attention of FBI management, we were provided with a copy of the guide.

We believe that employees who process invoices should have direct access to written policies and procedures, which are a necessary control to help prevent improper payments. FBI management concurred with our observation and agreed to provide each employee responsible for processing invoices with a copy of this guide.

In September 2004, the FBI submitted a report to JMD in accordance with the IPIA, which included a thorough program inventory and a description of its risk assessment. The report contained all of the required elements, and we noted no deficiencies in the report.

United States Marshals Service

The USMS does not have a mechanism in place to identify improper payments. USMS officials asserted the USMS had a low risk of making improper payments because of sufficient internal controls. Thus, no improper payments had been identified or recovered. During this audit, we did not conduct a complete assessment or testing of the USMS' internal control structure, so we do not endorse this assertion. While we acknowledge that a solid internal control structure can be instrumental in reducing the risk of making improper payments, it does not necessarily eliminate the occurrence of improper payments, and therefore it is crucial for the USMS to have a mechanism in place to identify improper payments actually made. The results of a recovery audit program could be utilized to identify specific programs with improper payments. Thus, our recommendation to implement a recovery audit program, which is detailed

under Finding II of this report, addresses the lack of a formalized system to identify improper payments.

According to USMS management, the USMS's internal control structure includes written policies and procedures, controls built into its financial management systems, and a multi-tiered invoice review and approval process.¹³ Further, USMS officials stated that they relied on their annual financial statement audit's opinion, past and ongoing audits by the Office of the Inspector General, and internal controls as a basis for asserting that it doesn't make improper payments.

Officials in the USMS's Prisoner Services Division also stated that reviews had not been conducted at the district office level in the past three to four years due to budget constraints and an ongoing reorganization of the division. A recent restructuring has led to the creation of two organizations, the Inspections Division and Internal Affairs, which the USMS states will begin routine reviews of district offices and detention agreements that will include transaction testing. Policies for this function were in the draft stages at the time of our fieldwork, and USMS personnel believed that these reviews would begin in early 2005. In our judgment, these reviews are an important internal control for identifying and preventing potential improper payments, and we agree they should include transaction testing of prior payments.

In September 2004, the USMS submitted a report to JMD in accordance with the IPIA, which included a very brief description of its risk assessment. However, we concluded that the assessment in the report was inadequate and incomplete. It contained only a limited summary of prior audit results. In addition, the report did not contain details of the USMS's program inventory, as required by OMB guidance. According to USMS officials, no program inventory was conducted. For the risk assessment, the USMS selected a judgmental sample of 15 invoices from all invoices paid in FY 2004 that exceeded \$400,000. Those payments were then traced back to supporting documentation, and no improper payments were found.

When we reviewed the sample of 15 invoices, we noted that the payments did not include those made from all USMS programs (e.g. travel and purchase cards, employee reimbursements, prisoner medical payments, detention agreement payments, and witness security payments). Further,

¹³ See the *Statement on Internal Controls*, at the back of this report, for details of our review of USMS's controls, policies, and procedures.

we believe that the \$400,000 threshold is too high, because improper payments can occur at levels far below \$400,000.

When we discussed these issues with USMS officials, they concurred with our findings. They agreed to conduct a complete program inventory, lower the threshold for future risk assessments so that payments from all programs are tested, and include a complete description of this program inventory and risk assessment in future IPIA reports.

Recommendations:

We recommend that the BOP:

1. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.
2. Ensure that future IPIA reports include a complete description of the risk assessment performed on each of the programs in its program inventory.

We recommend that OJP:

3. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.
4. Conduct a complete program inventory, perform a risk assessment for each identified program, and maintain the documentation of this program inventory and risk assessment.

5. Ensure that future IPIA reports include a complete description of the risk assessment performed for each of the programs in its program inventory.

We recommend that the FBI:

6. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.
7. Provide a copy of its *Desk Guide* for invoice processing procedures to all relevant employees, ensuring that all employees certify that they have received a copy.

We recommend that the USMS:

8. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.
9. Conduct a complete program inventory, perform a risk assessment for each identified program, and maintain the documentation of this program inventory and risk assessment.
10. Ensure that future IPIA reports include a complete description of the risk assessment performed for each of the programs in its program inventory.
11. Provide documentation, including formalized policies and procedures, for the implementation of an ongoing internal review program, which includes transaction testing.

II. Efforts to Determine the Extent of Improper and Erroneous Payments, and to Establish Methods to Recover Them

Our audit determined that the FBI, OJP, and USMS did not have processes in place to determine the full extent of improper payments made. Further, none of the four components we audited had established a fully-documented program to recover improper payments. We also found that recovery audit guidance provided by JMD could be improved. These conditions result from component management not placing priority on implementing a recovery audit effort, and from the lack of a comprehensive Departmentwide recovery audit program policy. These conditions increase the risk of improper payments not being identified and recovered, and in the Department not being in full compliance with Public Law 107-107, which requires each agency to have a recovery audit program in place.

Measuring the extent of improper payments is an essential step in assessing the need for and types of corrective actions required to manage improper payments and help ensure efficient and effective program operations. According to the GAO, “nondisclosure of improper payment amounts may indicate the absence of a significant level of improper payments or that agencies are unable to or did not attempt to determine or estimate the amount of improper payments in their programs or activities.”¹⁴

It is difficult for a component to be able to accurately assess the extent of its improper payments if it does not have a recovery audit program in place. A recovery audit program includes a comprehensive review of prior payments to determine whether they were improper. A recovery audit program looks for several types of improper payments, including: 1) duplicate payments, 2) payments made that were not in accordance with an applicable contract, 3) payments made for incorrect amounts, 4) payments for which allowable discounts were not taken, and 5) payments made for goods or services not received. While recovery audits can serve as an important vehicle for recovering improper payments already made, the results of these audits can also be used to determine the extent of improper payments and to identify systemic control weaknesses.

¹⁴ GAO-02-131R, *Financial Management: Improper Payments Reported in Fiscal Year 2000 Financial Statements*, dated November 2, 2001.

During our audit, we reviewed the laws and regulations applicable to recovery audit activities. In addition, we reviewed the policies and procedures used by the BOP, FBI, OJP, and USMS to quantify and recover improper payments. We also interviewed officials at each of these components who were responsible for recovery audit activities, and we reviewed policies implemented by JMD relating to recovery audits.

When conducting audit work at JMD, we determined that a written policy for recovery audits for the Department's OBDs had been implemented, but no recovery audit policy for other Department components had been established. According to JMD management, the Department had mandated that all components establish and implement a recovery audit program, but JMD had not implemented an official policy because it wanted to allow each component time to develop a policy that would best fit its individual and unique circumstances. However, during our audit of the four components, we determined that each component's recovery audit effort was in different stages of development and implementation. Under these circumstances, we believe the development and implementation of a Departmentwide policy could ensure that each Department component is undertaking adequate efforts to recover improper payments.

For example, the BOP and OBDs had contracted with a private recovery audit contractor to identify improper payments. This effort began in late FY 2003 and early FY 2004. As of September 2004, a total of \$1,156,949 in improper payments had been identified, and \$959,108 or nearly 83 percent had been recovered.¹⁵ However, as detailed in the following pages of this report, OJP signed an agreement to initiate recovery audit activities in October 2004. Thus, OJP's recovery audit program was in the initial stages at the time of our fieldwork, so no improper payments had yet been identified or recovered. Further, the FBI had only begun researching options for a recovery audit program, and had not yet implemented a formal program. The USMS had no recovery audit program in place and had not made any decisions regarding the implementation of a program at the time of our fieldwork.

Because of this lack of consistency among Department components, we believe that a Departmentwide recovery audit policy is necessary. This policy should include the scope (e.g. which years and payment amount thresholds), the types of payments that must be included in each

¹⁵ Of the \$1,156,949 in total improper payments found, BOP's portion was \$216,656, and \$211,251 had been recovered.

component's program (e.g. vendor payments, grant payments, contract payments, and detention and intergovernmental service agreement payments), and payment search criteria (e.g. data fields within automated financial systems). In addition, some components we audited agreed that Departmentwide guidance would be beneficial. When we discussed this issue with JMD officials, they agreed that enough time had passed and they would now develop and implement a Departmentwide policy for recovery audits.

We also noted that JMD did not have an official reporting mechanism for it to monitor each component's recovery audit activities on a regular, ongoing basis. While each component is required to report all recovery audit activities for the Department's annual PAR, no structure for monitoring ongoing progress reports existed. In our opinion, regular status reporting to JMD of each component's recovery audit activities and accomplishments would not only allow JMD to monitor the Department's ongoing progress, but would also encourage each component to focus on its recovery audit efforts.

We discussed this issue with JMD officials and they agreed that quarterly status reporting for recovery audit activities would be helpful in monitoring the Department's progress. They agreed to prepare and implement a written policy.

Federal Bureau of Prisons

Our audit found that the BOP had determined the extent of its improper payments and had established a method for recovery. As previously mentioned, the BOP was using a contractor to conduct recovery audits. This effort started in September 2003 and payments made from 1999 through 2004 are now being reviewed. While the effort is ongoing, as of September 2004, \$216,656 in improper payments had been identified, and \$211,251 or nearly 98 percent had been recovered.

However, we noted that the BOP had not implemented written policies and procedures for its recovery audit program. In our judgment, written policies and procedures are an important aspect of any program, and should include information such as: 1) methodology and scope of transactions, 2) types of programs and payments, 3) search criteria, 4) information on the identification and confirmation of identified payments, and 5) details of the collection process. We discussed this with BOP officials and they agreed to

establish and implement written procedures for BOP's recovery audit program.

Office of Justice Programs

Our audit found that OJP had not determined the extent of its improper payments, but had established a method of recovery. As previously detailed, OJP contracted with a private company to conduct recovery audits of its vendor payments. The contract was signed in October 2004. As of the time of our fieldwork, no improper payments had been identified or recovered. The initial phases of the program will focus on payments made in FY 2003 and FY 2004, and depending on the results of the audits, may then be expanded to prior years. In our opinion, this recovery audit program, once fully implemented, will enhance OJP's ability to determine the extent of its improper payments and recover those payments. In addition, we believe that the scope of these audits should extend beyond 2003, and should be addressed in a Departmentwide recovery audit policy.

OJP's recovery audit effort does not include a review of grant payments. Officials at OJP stated that its External Oversight Division reviews grant payments and its internal audit group will begin examining payments made under its State Criminal Alien Assistance Program. In addition, they believed that these reviews, combined with the recovery audits being conducted by the contractor, satisfied the intent of the IPIA. However, we noted that OJP's IPIA report and risk assessment only included grant payments. In FY 2004, OJP reported making over 82,000 grant payments totaling nearly \$5.7 billion. While the IPIA and OMB guidance do not address specific types of payments, because of the volume of these grant payments and the resultant potential improper payment risk we believe that OJP's grant payments should be included in its recovery audit effort.

Further, OJP had not implemented written policies and procedures for its recovery audit program. In our judgment, written policies and procedures are an important aspect of any program, and should include information such as: 1) methodology and scope of transactions, 2) types of programs and payments, 3) search criteria, 4) information on the identification and confirmation of identified payments, and 5) details of the collection process. We discussed this with OJP officials and they agreed to establish and implement written policies and procedures for their recovery audit program.

Federal Bureau of Investigation

We determined that the FBI did not have processes in place to determine the full extent of its improper payments, and it did not have a formalized mechanism to recover improper payments already made. As mentioned previously, the FBI has an informal process to identify improper payments. In FY 2004, the FBI identified \$292,137 in improper payments and had recovered \$237,160 or 81 percent of those payments at the time of our fieldwork. However, these payments were usually discovered as the result of a vendor call or the FBI receiving a refund check for a duplicate payment made. They likely do not represent the full extent of improper payments made by the FBI.

Each component within the Department must have a recovery audit program in place so that the Department is in compliance with Public Law 107-107. Therefore, the FBI should develop and implement a formalized recovery audit program, including written policies and procedures that include the following information: 1) methodology and scope of transactions, 2) types of programs and payments, 3) search criteria, 4) information on the identification and confirmation of identified payments, and 5) details of the collection process. This recovery audit program, once fully implemented, will enhance the FBI's ability to determine the extent of its improper payments and recover those payments. We discussed this with FBI officials and they agreed to establish and implement a recovery audit program, including written policies and procedures.

United States Marshals Service

We determined that the USMS did not have processes in place to determine the extent of its improper payments, and did not have a formalized mechanism to recover improper payments already made. As mentioned previously, USMS officials stated they did not believe the USMS made any improper payments because of sufficient internal controls. Therefore, no recovery audit program was in place to quantify and collect improper payments.

Each component within the Department must have a recovery audit program in place for the Department to be in compliance with Public Law 107-107. Therefore, the USMS should develop and implement a formalized recovery audit program, including written policies and procedures

that include the following information: 1) methodology and scope of transactions, 2) types of programs and payments, 3) search criteria, 4) information on the identification and confirmation of identified payments, and 5) details of the collection process. This recovery audit program, once fully implemented, will enhance the USMS's ability to determine the extent of its improper payments and recover those payments. We discussed this with USMS officials and they agreed to establish and implement a recovery audit program, including written policies and procedures.

In conclusion, while some components within the Department have policies and procedures in place to identify and prevent improper payments, some component's policies and procedures are lacking, and others do not have any policies and procedures. In addition, there is significant variance in each component's progress in implementing a recovery audit program. The recommendations in this report will help ensure that all components make progress toward compliance with applicable laws, regulations, and guidance pertaining to improper payments.

Recommendations:

We recommend that JMD:

12. Develop and implement a Departmentwide recovery audit policy, which defines the scope, types of payments, and criteria to be included in each component's recovery audit program.
13. Implement a policy for Department components to report quarterly on recovery audit activities, including 1) current activities, 2) amounts of improper payments identified and recovered, and 3) planned activities for the following quarter.

We recommend that the BOP:

14. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.
15. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

We recommend that OJP:

16. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.
17. Ensure that its recovery audit program addresses and includes grant payments.
18. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

We recommend that the FBI:

19. Develop and implement a comprehensive recovery audit program, including written policies and procedures, in accordance with guidance received from JMD.
20. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

We recommend that the USMS:

21. Develop and implement a comprehensive recovery audit program, including written policies and procedures, in accordance with guidance received from JMD.
22. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards*, we reviewed records and other documents pertaining to improper and erroneous payments to obtain reasonable assurance about each component's compliance with applicable laws and regulations, that, if not complied with, could have a material effect on the Department's overall compliance with those laws and regulations. Compliance with laws and regulations applicable to improper and erroneous payments is the responsibility of each component's management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. The legislation pertinent to this audit and the applicable regulations it contains are as follows:

Improper Payments Information Act of 2002 (Public Law 107-300)

This law requires agency heads to:

- identify programs and activities susceptible to significant improper payments;
- estimate the annual amount of improper payments and report that estimate to Congress; and
- report the actions taken to reduce improper payments, including possible causes, whether the information system and infrastructure are adequate, a description of the resources requested if the information system and infrastructure were deemed inadequate, and a description of the steps in place to ensure agency heads are held accountable for reducing improper payments.

National Defense Authorization Act for FY 2002, Subchapter VI (Public Law 107-107)

This law contains requirements for recovery audits. Specifically, it:

- requires all agencies with total contracts in excess of \$500 million to carry out a recovery audit program for identifying errors and recovering amounts erroneously paid;

- limits the availability of collected funds to reimburse actual expenses incurred by the executive agency in administering the program and to pay contractors for services provided under the program;
- permits unused funds to be credited to appropriations, or if no appropriation is available, to be deposited in the Treasury as miscellaneous receipts;
- requires agencies to consider all available resources when deciding on a recovery audit program, including the executive agency, other departments and agencies, and private sector sources; and
- allows management to carry out improvement programs addressing problems that contribute to errors in paying contractors and in order to improve the recovery of overpayments.

Office of Management and Budget Memorandum M-03-07

This memorandum provided guidance on the implementation of Public Law 107-107. Specifically, it:

- required agencies to implement a recovery audit program when the annual value in total contracts exceeds \$500 million;
- established reporting requirements for recovery audit efforts, which must include a description of the program including steps to carry out the program, total costs of the program, total amount of payment errors identified, total amount deemed not recoverable, total amount recoverable, total amount outstanding pending final collection, a description and evaluation of any management improvement programs carried out, and a description of classes of contracts excluded;
- mandated that agency heads ensure that recovery audits do not result in a duplicative audit of contractor records;
- requested agencies to question why errors are occurring and try to prevent them;

- stated that “agency Inspectors General and other external agency auditors are encouraged to assess the effectiveness of agencies’ recovery audit programs;” and
- specified the disposition of recovered amounts.

Office of Management and Budget Memorandum M-03-13

This memorandum provided guidance on the implementation of Public Law 107-300. Specifically, Memorandum M-03-13 explained that it supersedes Section 57 of OMB Circular A-11 and that all improper payment reporting beginning in FY 2004 should follow this guidance. Also, this memorandum requires agencies to:

- review all programs and activities and identify those susceptible to significant improper payment (significant improper payments are those in a program annually exceeding both 2.5 percent of program payments and \$10 million);
- estimate the annual amount of significant improper payments in all programs and activities, which is a gross total of both over and under payments;
- implement a plan to reduce significant improper payments; and
- report estimates of annual improper payments and the progress in reducing them in the Management Discussion and Analysis section of its PAR.

Office of Management and Budget Memorandum M-04-20

This memorandum provided guidance on IPIA and recovery audit reporting. Specifically, it:

- required agencies to provide a summary including progress and plans to reduce improper payments in the Management Discussion and Analysis section of the PAR in order to comply with M-03-13;
- provided details of the report format, which included a risk assessment; a description of statistical sampling used to estimate

improper payments; corrective action plans; an improper payment reduction outlook; a discussion of the recovery audit effort; actions to ensure agency managers are held accountable for reducing improper payments; a description of the adequacy of the information system and infrastructure; and a description of any legal or regulatory barriers which could limit corrective actions in reducing improper payments.



Our tests revealed that the DOJ components we reviewed did not fully comply with the above laws and regulations, as detailed in the body of this report.

STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit, we considered Department components' internal controls for the purpose of determining our auditing procedures. We also reviewed various controls over the payment processes at these components to develop an understanding of those processes. In addition, we conducted a limited review of the controls, including policies and procedures, which the BOP, FBI, OJP, and USMS represented were in place to prevent improper payments. However, these reviews did not include an overall assessment or testing of the internal control structure. Therefore, these reviews were not made for the purpose of providing assurance on the internal control structure as a whole. However, we noted certain matters that we consider to be reportable conditions under generally accepted *Government Auditing Standards*.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could increase the risks of making improper payments or could hinder the implementation of cost-effective recovery audit programs. We noted deficiencies relating to the identification and prevention of improper payments, discussed in Finding No. 1. We also noted deficiencies concerning recovery audit efforts, discussed in Finding No. 2. However, we did not consider these deficiencies to be a result of systemic internal control issues.

Because we are not expressing an opinion on the components' internal control structure as a whole, this statement is intended solely for the information and use of JMD, BOP, FBI, OJP, and USMS in overseeing each component's compliance with the IPIA, and with implementing and administering a recovery audit program within each component.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to determine whether the Department has:

1. established policies and procedures for identifying and preventing improper and erroneous payments,
2. determined the extent of improper and erroneous payments, and
3. established methods to recover improper and erroneous payments.

We conducted our audit in accordance with *Government Auditing Standards*. We included such tests as were considered necessary to accomplish the audit objectives.

The audit generally covered activities through the conclusion of our fieldwork in November 2004. Audit work was conducted at the Justice Management Division and at the four Department components selected for review: 1) Federal Bureau of Prisons, 2) Federal Bureau of Investigation, 3) Office of Justice Programs, and 4) United States Marshals Service.

These components were selected based on a number of factors, including:

- the total number and dollar amount of vendor payments made in FY 2003 and FY 2004;
- our review and analysis of reporting submitted in accordance with the IPIA;
- the agency's current recovery audit activities, and whether the component was using a contractor for these efforts or whether it was conducting the recovery audits in-house; and
- the results of each agency's annual financial statement audit for FY 2004.

APPENDIX I

We conducted onsite work at the JMD and at each of the four components in November 2004. We interviewed staff members at each component to:

- obtain an understanding of the procedures and rationale used when completing its IPIA reports,
- gather information relating to the payment processes,
- identify the controls in place to prevent or reduce improper payments,
- obtain an understanding of any processes used to identify and quantify improper payments already made, and
- assess any current recovery audit activities.

In addition, we reviewed policies, procedures, and other documentation related to these issues.

Finally, we interviewed officials of the recovery audit contractor being utilized by selected Department components and OBDs. We obtained information on its current efforts within the Department, including the processes used, the results achieved, and anticipated future activities.

AUDIT CRITERIA

Federal Legislation

Improper payments and recovery audits are described in Public Law No. 107-300, the *Improper Payments Information Act of 2002* (IPIA), and in Public Law No. 107-107, the *National Defense Authorization Act for FY 2002* (NDAA), Subchapter VI – Recovery Audits. The IPIA called for the heads of federal agencies to identify programs and activities susceptible to improper payments, estimate the annual amount of improper payments and report that estimate to Congress, and when improper payments exceed \$10 million, report the actions taken to reduce improper payments.

The NDAA primarily addressed recovery audits. Recovery audits are programs to identify errors and recover amounts improperly or erroneously paid. An agency is required to carry out a recovery audit program when its annual value of total contracts exceeds \$500 million. Each agency is also encouraged to consider all resources available when establishing its recovery audit program.

Office of Management and Budget Policy Memoranda

The first OMB policy memorandum to address improper payments was Memorandum M-03-07, dated January 2003. This memorandum required agencies to establish a recovery audit program and report the progress made in reducing improper payments when the annual total value of its contracts exceeds \$500 million. Agencies are required to provide information about recovery audit programs and progress in reducing improper payments, including:

- steps taken to carry out a recovery audit program;
- total costs of the recovery audit program, separately reporting the costs of the agency's recovery audit program activities and contracted recovery audit services;
- the total amount of payment errors identified, total amount deemed not recoverable, total amount recoverable, total amount outstanding pending final collection;

APPENDIX II

- a description and evaluation of any management improvement program carried out; and
- a description of classes of contracts excluded.

Four months after M-03-07, OMB issued Memorandum M-03-13, defining significant improper payments to be total improper payments in a program exceeding both 2.5 percent of the program payments and \$10 million. This memorandum made it mandatory for agencies to review and identify programs susceptible to significant improper payments, estimate the annual amount of significant improper payments, implement a plan to reduce those improper payments, and report this information in the annual PAR.

In July 2004, Memorandum M-04-20 was issued, which established the format for agencies to report IPIA activities and plans to reduce improper payments in the annual PAR. The report format required:

- a risk assessment,
- a description of statistical sampling used to estimate improper payments,
- any corrective action plans,
- an improper payment reduction outlook,
- a description of the recovery audit effort,
- a description of actions to ensure agency managers are held accountable for reducing improper payments,
- a description of the adequacy of the information system and infrastructure, and
- a description of any legal or regulatory barriers which could limit corrective actions in reducing improper payments.

Justice Management Division Policies and Guidance

Policies and guidance issued by JMD served as an additional source of audit criteria for our audit. These policies were generally in the form of memoranda and pertained to providing guidance to Department components in connection with the implementation of the federal legislation and OMB policies, referenced in the previous two pages. The policies followed those contained in OMB memoranda pertaining to IPIA reporting and recovery audits.

THE PRESIDENT'S MANAGEMENT AGENDA

According to a report from the OMB, the President's Management Agenda (PMA), enacted in August 2001, is a strategy for improving the management and performance of the federal government. It focuses on the areas where deficiencies were most apparent and where the government could begin to deliver concrete, measurable results. The PMA includes the following five government-wide initiatives:¹⁶

- *Strategic Management of Human Capital* – having processes in place to ensure the right person is in the right job, at the right time, and is not only performing, but performing well;
- *Competitive Sourcing* – regularly examining commercial activities performed by the government to determine whether it is more efficient to obtain such services from federal employees or from the private sector;
- *Improved Financial Performance* – accurately accounting for the taxpayers' money, giving managers timely and accurate program cost information to make informed management decisions, and controlling costs;
- *Expanded Electronic Government* – ensuring that the federal government's annual investment in information technology (IT) significantly improves the government's ability to serve citizens, and that IT systems are secure, and delivered on time and on budget; and
- *Budget and Performance Integration* – ensuring that performance is routinely considered in funding and management decisions, and that programs achieve expected results and work toward continual improvement.

The third initiative, "Improved Financial Performance," includes provisions for agencies to determine the extent of improper payments and to establish goals for reducing them.

¹⁶ Excerpts from the PMA were taken from an OMB report, entitled *The Federal Government is Results-Oriented*, dated August 2004.



U.S. Department of Justice

MAR 25 2005

Washington, D.C. 20530

MEMORANDUM

TO: Guy K. Zimmerman
Assistant Inspector General
for Audit

FROM: Paul R. Corts *PRC*
Assistant Attorney General
for Administration

SUBJECT: Response to the Office of the Inspector General's (OIG) Draft Report:
Department of Justice Process for Identifying, Preventing, and Recovering
Improper and Erroneous Payments

This responds to the Office of the Inspector General's (OIG) Draft Report: Department of Justice Process for Identifying, Preventing, and Recovering Improper and Erroneous Payments.

Recommendation 1: Ensure that its future risk assessment, required to be in its Improper Payments Information Act (IPIA) report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.

Response: The Bureau of Prisons (BOP) concurs with the recommendation. The BOP will include in future risk assessments required for the Improper Payments Information Act (IPIA) report the results from the most recent financial statement audit, including any material weaknesses or reportable conditions; the effect of those weaknesses or conditions on the risk of making improper payments; and a description of the corrective action taken to address the weakness or conditions. The enhanced IPIA report for FY 2005 will be submitted to the Justice Management Division (JMD) when requested. The report for FY 2004 was submitted to JMD on September 1, 2004.

Recommendation 2: Ensure that future IPIA reports include a complete description of the risk assessment performed on each of the programs in its program inventory.

Response: The BOP concurs with the recommendation. In future IPIA reports, the BOP will include a description of the risk assessment performed on each of the programs in its program inventory.

Memorandum for Guy K. Zimmerman

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Subject: Response to the Office of the Inspector General's (OIG) Draft Report:
Department of Justice Process for Identifying, Preventing, and Recovering
Improper and Erroneous Payments

Recommendation 3. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.

Response: The Office of Justice Programs (OJP) concurs with the recommendation. The OJP will include in future risk assessments required for the Improper Payments Information Act (IPIA) report the results from the most recent financial statement audit, including any material weaknesses or reportable conditions; the effect of those weaknesses or conditions on the risk of making improper payments; and a description of the corrective action taken to address the weakness or conditions.

Recommendation 4. Conduct a complete program inventory, perform a risk assessment for each identified program, and maintain the documentation of the program inventory and risk assessment.

Response: The OJP concurs with the recommendation. By July 31, 2005, the Program Review Office will conduct a complete program inventory and perform a risk assessment for each program identified. The Program Review Office will maintain documentation of the program inventory and risk assessment.

Recommendation 5. Ensure that future IPIA reports include a complete description of the risk assessment performed for each of the programs in its program inventory.

Response: The OJP concurs with the recommendation. In future IPIA reports, the OJP will include a complete description of the risk assessment conducted for each program in the program inventory.

Recommendation 6. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.

Response: The Federal Bureau of Investigation (FBI) concurs with the recommendation. For all future risk assessments, the FBI will include the results from the financial statement audits and the effect of those conditions on the risk of making improper payments. A description of corrective actions will also be included.

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Subject: Response to the Office of the Inspector General's (OIG) Draft Report:
Department of Justice Process for Identifying, Preventing, and Recovering
Improper and Erroneous Payments

Recommendation 7. Provide a copy of its *Desk Guide* for invoice processing procedures to all relevant employees, ensuring that all employees certify that they have received a copy.

Response: The FBI concurs with the recommendation. The Commercial Payments Unit (CPU) has re-issued the Desk Guide, which incorporates changes through November 2004, and which was again provided to all voucher examiners. CPU updates this Guide periodically through emails, routing slips, and training. The CPU maintains a signature log of voucher examiners receiving a copy of the Desk Guide.

Status: The FBI considers this recommendation closed.

Recommendation 8. Ensure that its future risk assessment, required to be in its IPIA report, contains: 1) the results from its most recent financial statement audit, including any material weaknesses or reportable conditions; 2) the effect of those weaknesses or conditions on its risk of making improper payments; and 3) a description of the corrective actions taken to address those weaknesses or conditions.

Response: The United States Marshals Service (USMS) concurs with the recommendation. The USMS will include in future risk assessments required for the Improper Payments Information Act (IPIA) report the results from the most recent financial statement audit, including any material weaknesses or reportable conditions; the effect of those weaknesses or conditions on the risk of making improper payments; and a description of the corrective action taken to address the weakness or conditions.

Recommendation 9. Conduct a complete program inventory, perform a risk assessment for each identified program, and maintain the documentation of this program inventory and risk assessment.

Response: The USMS concurs with the recommendation. The USMS will conduct a complete program inventory, perform a risk assessment for each identified program, and maintain the documentation of the program inventory and risk assessment.

Recommendation 10. Ensure that future IPIA reports include a complete description of the risk assessment performed for each of the programs in its program inventory.

Response: The USMS concurs with the recommendation. The USMS will include a description of the risk assessment performed for each of the programs in its program inventory in future IPIA reports.

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Subject: Response to the Office of the Inspector General's (OIG) Draft Report:
Department of Justice Process for Identifying, Preventing, and Recovering
Improper and Erroneous Payments

Recommendation 11. Provide documentation, including formalized policies and procedures, for the implementation of an ongoing internal review program, which includes transaction testing.

Response. The USMS concurs with the recommendation. The USMS will provide documentation, including formalized policies and procedures, for the implementation of an ongoing internal review program, which includes transaction testing.

Recommendation 12. Develop and implement a Department wide recovery audit policy, which defines the scope, types of payments, and criteria to be included in each component's recovery audit program.

Response. The Justice Management Division (JMD) concurs with the recommendation. The JMD, Finance Staff, will develop and implement a Department wide recovery audit policy, which defines the scope, types of payments, and criteria to be included in each component's recovery audit program.

Recommendation 13. Implement a policy for Department components to report quarterly on recovery audit activities, including: 1) current activities, 2) amounts of improper payments identified and recovered, and 3) planned activities for the following quarter.

Response. The JMD concurs with the recommendation. On December 16, 2004, the JMD, Finance Staff, established a new reporting requirement, the Quarterly Report on Recovery Audit Activities. The report for the first quarter of FY 2005, was due on January 7, 2005. Reports for subsequent quarters are due within 5 work days following the end of each quarter. The Department components are reporting quarterly on recovery audit activities, including current activities, amounts of improper payments identified and recovered, and planned activities for the following quarter.

Status: The JMD has included the memorandum establishing the Quarterly Report on Recovery Audit Activities (Report) and the data call for the second quarter Report in its response. Therefore, the JMD considers this recommendation closed.

Recommendation 14. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.

Response. The BOP concurs with the recommendation. The BOP will develop written recovery audit procedures after receiving the appropriate guidance from JMD concerning the recovery audit program. The BOP's recovery audit procedures will be documented within two months after JMD issues its guidance.

Memorandum for Guy K. Zimmerman

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Subject: Response to the Office of the Inspector General's (OIG) Draft Report:
Department of Justice Process for Identifying, Preventing, and Recovering
Improper and Erroneous Payments

Recommendation 15. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

Response: The BOP concurs with the recommendation. Beginning with the first quarter of FY 2005, the BOP began reporting the recovery audit activities and accomplishments to JMD on a quarterly basis.

Status: The BOP has included its quarterly Report on Recovery Audit Activities for the first quarter of FY 2005. Therefore, the BOP considers this recommendation closed.

Recommendation 16. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.

Response. The OJP concurs with the recommendation. The Program Review Office and the Office of the Comptroller will develop and implement written policies and procedures, consistent with guidance from JMD, for OJP's recovery audit program.

Recommendation 17. Ensure that its recovery audit program addresses and includes grant payments.

Response. The OJP concurs with the recommendation. The written policies and procedures for OJP's recovery audit program that will be developed by the Program Review Office and the Office of the Comptroller will include grant payments. While grant payments are not covered under Public Law 107-107, *National Defense authorization Act for FY 2002*, OJP agrees that recovery of overpayments to grantees should be collected.

Recommendation 18. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

Response. The OJP concurs with the recommendation. Beginning with the first quarter of FY 2005, the OJP began reporting the recovery audit activities and accomplishments to JMD on a quarterly basis.

Status: The OJP has included its quarterly Report on Recovery Audit Activities for the first quarter of FY 2005. Therefore, the OJP considers this recommendation closed.

Recommendation 19. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.

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Subject: Response to the Office of the Inspector General's (OIG) Draft Report:
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Response. The FBI concurs with the recommendation. Following amplifying guidance from JMD, the FBI will formalize its existing policies and procedures in the form of a serialized electronic communication which mandates that the existing recovery program includes all activities related to improper payments. Further, the FBI's program will be in accordance with JMD guidance.

Recommendation 20. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

Response. The FBI concurs with the recommendation. Effective with the reporting period which ended December 31, 2004, and in accordance with guidance received from JMD, the FBI began reporting its recovery audit activities and accomplishments quarterly to JMD.

Status: The FBI has included its quarterly Report on Recovery Audit Activities for the first quarter of FY 2005. Therefore, the FBI considers this recommendation closed.

Recommendation 21. Develop and implement written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.

Response. The USMS concurs with the recommendation. The USMS will develop written recovery audit procedures after receiving the appropriate guidance from JMD concerning the recovery audit program.

Recommendation 22. Report recovery audit activities and accomplishments quarterly to JMD, in accordance with guidance received from JMD.

Response. The USMS concurs with the recommendation. Beginning with the first quarter of FY 2005, the USMS began reporting the recovery audit activities and accomplishments to JMD on a quarterly basis.

Status: The USMS has included its quarterly Report on Recovery Audit Activities for the first quarter of FY 2005. Therefore, the USMS considers this recommendation closed.

If you have any questions concerning this subject, please contact Melinda Morgan, Director, JMD/Finance Staff, on (202)616-5800, or Lori Arnold, Assistant Director, Financial Management Policies and Requirements Group, JMD/Finance Staff, on (202)616-5216.

Attachments

**OFFICE OF THE INSPECTOR GENERAL
AUDIT DIVISION
ANALYSIS AND SUMMARY OF ACTIONS NECESSARY
TO CLOSE REPORT**

The responses to our draft report from JMD, OJP, the BOP, the FBI, and the USMS, as consolidated by JMD, appear in Appendix IV. In their responses, the components agreed with all 22 of our recommendations and each component described corrective actions it has taken or intends to take to close the audit recommendations. Also attached to the component responses was documentation to support some of the responses. Due to its volume, we have omitted these documents; however, they can be obtained by contacting the Office of the Inspector General.

The status of the individual recommendations and the responsible components are as follows:

1. **Closed (BOP).**
2. **Closed (BOP).**
3. **Closed (OJP).**
4. **Resolved (OJP).** This recommendation can be closed when we receive documentation that OJP has conducted a complete program inventory and performed a risk assessment for each identified program.
5. **Closed (OJP).**
6. **Closed (FBI).**
7. **Resolved (FBI).** This recommendation can be closed when we receive documentation that a copy of the FBI's *Desk Guide* for invoice processing procedures has been provided to all relevant employees.
8. **Closed (USMS).**
9. **Resolved (USMS).** This recommendation can be closed when we receive documentation that the USMS has conducted a

complete program inventory and performed a risk assessment for each identified program.

10. **Closed (USMS).**
11. **Resolved (USMS).** This recommendation can be closed when we receive formalized policies and procedures from the USMS for the implementation of an ongoing internal review program, which includes transaction testing.
12. **Resolved (JMD).** This recommendation can be closed when we receive documentation that JMD has developed and implemented a Department-wide recovery audit policy, including the scope, types of payments, and criteria to be included in each component's recovery audit program.
13. **Closed (JMD).**
14. **Resolved (BOP).** This recommendation can be closed when we receive documentation that the BOP has developed and implemented written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.
15. **Closed (BOP).**
16. **Resolved (OJP).** This recommendation can be closed when we receive documentation that OJP has developed and implemented written policies and procedures for its recovery audit program, in accordance with guidance received from JMD.
17. **Resolved (OJP).** This recommendation can be closed when we receive documentation that OJP's recovery audit program addresses and includes a review of grant payments.
18. **Closed (OJP).**
19. **Resolved (FBI).** This recommendation can be closed when we receive documentation that the FBI has developed and implemented a comprehensive recovery audit program, including written policies and procedures, in accordance with guidance received from JMD.
20. **Closed (FBI).**

21. **Resolved (USMS).** This recommendation can be closed when we receive documentation that the USMS has developed and implemented a comprehensive recovery audit program, including written policies and procedures, in accordance with guidance received from JMD.
22. **Closed (USMS).**